The authorities are unanimously in accord with the principal case. *People* v. *Rosenheimer*, 209 N. Y. 115, 102 N. E. 530; *People* v. *Diller*, 24 Cal. App. 799, 142 Pac. 797; *Ex Parte Kneedler*, 243 Mo. 632, 147 S. W. 983. They proceed upon the argument that automobile driving is a privilege granted by the state upon condition that the operator waives his constitutional privilege against self-incrimination. But it is suggested that in the case of an unlicensed driver a waiver of the constitutional privilege could not reasonably be inferred from the act of going on the highway, without knowledge of the condition and without intent to waive the privilege. If that is so, the statute, being unconstitutional as to part of the persons falling within its terms, would be unconstitutional as a whole. *James* v. *Bowman*, 190 U. S. 127. The principal case may be supported on other grounds, however. The problem is to determine the legal meaning of the word "evidence" in the New Hampshire Constitution. Though there is a singular lack of authority in the books, it would seem that at early common law "evidence" meant matters of fact offered in a judicial investigation, and that nowadays it is properly stretched to include matters of fact offered in all sorts of investigations. *In re Emery*, 107 Mass. 172. See *In re Van Tine*, 12 How. Pr. (N. Y.) 507; THAYER, PRELIMINARY TREATISE ON EVIDENCE, 264. But the existence of an investigation and the offering of facts for their probative or testimonial value in that investigation are apparently necessary elements; and neither of them was to be found in the defendant's situation under the statute. See *People* v. *Rosenheimer*, 146 App. Div. 875, 878, 130 N. Y. Supp. 544, 546; *U. S.* v. *Cross*, 20 D. C. 365, 382; WIGMORE, EVIDENCE, §§ 2263, 2264. If the New Hampshire constitutional privilege were phrased with the word "witness," as in the federal Constitution, the conclusion would be easier to grasp; but the extent of the privilege does not vary with the terms used to describe it. See WIGMORE, EVIDENCE, § 2252. *Cf.* 24 HARV. L. REV. 570.

BOOK REVIEWS

A TREATISE ON THE CONFLICT OF LAWS, OR PRIVATE INTERNATIONAL LAW. By Joseph H. Beale. Volume I, Part I, pp. lxxx, 189. Cambridge: Harvard University Press. 1916.

The above is but a small fraction of a comprehensive treatise on the Conflict of Laws, the finishing of which, according to the preface, will involve the labor of many years. It is offered merely in a tentative form for the purpose of inviting criticism and of enabling the author to benefit "by further study and by more mature thought, and especially by that ocular demonstration of faulty thought and inept expression which seeing one's thought in print alone can give." When at last the work is completed, our author hopes that it will include this part in a much improved form.

The treatise proper is preceded by a bibliography covering eighty pages, which includes such books and articles only as are of general scope. Books and articles upon separate topics are to be collected in a section of each chapter in which the topics are considered. The books are classified in two parts: first, books written before 1800; second, books written since 1800. Each part is further classified according to the country in which, or, in the case of modern books, the language in which each book was written. In the case of almost every book a short note is given stating the nature and the scope of the book or something which will give the student unfamiliar with the book some idea of its helpfulness. With the books the names of articles which consider the subject in a general way are given, classified according to the language of the periodical in which they appear. A list of books and special periodicals are suggested as desirable for a public law library in America or England, and a

smaller list as necessary for the working library of a lawyer who desires an office library on the subject.

Professor Beale has placed all students of the Conflict of Laws under a debt of gratitude for having included in the part now published the most complete bibliography of general books and articles on the Conflict of Laws to be found in any language, the value of which is greatly enhanced by the author's notes and comments. American students will welcome with especial satisfaction the exhaustive list of works dealing with the Conflict of Laws in Central and South America, which it was exceedingly difficult to secure heretofore. The laborious and difficult task of preparing the bibliography has been executed with great care, even in the smallest details, such as the citing of the foreign titles. Though these titles involve many different languages, only a few errors occur. A few of the books and articles mentioned relate to special topics and should not have appeared, therefore, in the general list — *e. g.*, Daireaux, p. xxviii; Haus, p. xxxi; Visscher, p. xxxvii; Puetter, p. xlvi; Sieber, p. xlviii; Woerner, p. xlix; Baisini, p. lii; Buzzati, p. lii. One or two minor omissions may also be noted in passing, such as Ottolenghi, *Sulla Funzione e sull' Efficacia delle Norme Interne di Diritto Internazionale Privato*, Turin 1913, and International Law Notes, a monthly bulletin of matters of interest to practitioners in private international law, published in London since January, 1916.

Of the treatise itself, two books are now offered which are introductory in their nature. Book I has three chapters: (1) Scope and Name of the Subject (pp. 1–17). (2) History of the Conflict of Laws (pp. 18–61). (3) Current Doctrine on the Conflict of Laws (pp. 62–113). Book II is entitled "Preliminary Consideration of Jurisprudence" and deals in chapter 4 with Law and Jurisdiction (pp. 114–61), and in chapter 5 with Rights (pp. 162–89). The principal criticism to be made of chapter 1 is that it does not set forth the scope of the work with sufficient definiteness. The reader is told to what extent Criminal Law will be dealt with, but nothing is said about International Procedure, Maritime Law, the Law of International Copyright, Trade-marks, and the like. As v. Bar, Meili, and others deal with these topics in general works on the Conflict of Laws, some statement should be made concerning the author's purpose in this regard. The nature of the subject also might be explained more fully, so as to show the relationship of the Conflict of Laws to Municipal Law in the narrower sense, and to International Law.

In a note to section 1 of the treatise Professor Beale contrasts the Conflict of Laws, which deals primarily with the application of laws in space, with the "application of laws in time." According to Professor Beale the latter "has received no name; and though it makes use of similar principles, it is not usually regarded as sufficiently important for separate treatment." This statement is not quite accurate. A learned treatise on the subject has been written by Professor Affolter, who calls it "Inter-temporal law." By others it is called "Transitory Law"; for example, by Professor Cavaglieri (*Diritto Internazionale Privato e Diritto Transitorio*, 1904).

Chapter 2, entitled "History of the Conflict of Laws," traces the story of the Conflict of Laws from the days of the Roman Empire to the beginning of the nineteenth century. Professor Beale correctly states that notwithstanding the Edict of Caracalla (A. D. 212), which extended Roman citizenship to all inhabitants who were thereby entitled to the enjoyment of the *ius civile*, local customs long survived and gave rise, for a long time, to questions relating to the Conflict of Laws. It cannot be said, however, that "in the end a considerable body of doctrine (concerning the Conflict of Laws) became embodied in the *Corpus Juris*," for the number of passages contained therein is surprisingly small. The reason for this is undoubtedly due to the fact, as v. Bar suggests, that the compilers under Justinian were practical men who were not interested in the discussion to be found in the juristic literature concerning a subject which

was antiquated at the time of the codification. Concerning the passages most frequently cited, disagreement exists among the European scholars as to whether they actually relate to the Conflict of Laws. Professor Beale's generalizations are not supported in their totality by the *Corpus Juris*. In fact in some respects clear statements to the contrary are to be found therein. Professor Beale says, for example, "the maxim *locus regit actum* is established . . . for the form of legal documents" (p. 23). The only citation from the *Corpus Juris* made in support of this statement is that of Dig. XXIX. 1. ult. The passage referred to may mean that all who are of such a condition that they cannot make a will by military law, if they are seized and die in a hostile country, may make a will in the form authorized by the local law. It certainly does not prove that wills *in general* may be executed, as regards form, in the mode prescribed by the local law. A rescript of the Emperor Diocletian shows clearly that the law of domicile governed the validity of wills as regards form. Cod. VI. 23. 9. The maxim *locus regit actum* was not established until the fourteenth century. Bartolus and his followers attempted to find support for the rule in *Corpus Juris*, but it is now generally conceded that their attempt failed. See Savigny, Private International Law (Guthrie's translation), pp. 326–27; II Lainé, *Introduction Au Droit International Privé*, pp. 340, 354–55; I Foelix, *Traité du Droit International Privé*, 4 ed., pp. 165–66; and Buzzati, *L'Autorità delle Legge Straniere relative alla Forma degli Atti Civili*, pp. 25–28.

Professor Beale regards Story as "the creator of the modern science" and his book "the point of departure of all modern theories" (p. 51). He says: "From him the law flowed on in three streams, the theory of the neo-statutists, the theory of the internationalists and the common law doctrine of territorial law recognizing vested rights" (p. 52). That Story is the founder of the Anglo-American school must, of course, be admitted by all, but can it be truthfully stated that "the doctrines of both the modern European schools were largely based on the work of Joseph Story" (p. 52)? The only evidence adduced by Professor Beale is (1) an admission on the part of Foelix, a neo-statutist, that he adopted Story's theory of comity; (2) that Schaeffner's first reference in his notes is to Story, whose commentaries are listed and described in the bibliography, and (3) that Savigny, in his preface to his Conflict of Laws, refers to Story's "excellent" and "extremely useful" work. This is certainly scanty evidence for the broad generalization made. That Story's great learning and helpful discussion of English and American cases should be duly appreciated by the continental writers is natural. No one would deny the great merit of Story's work. It has seemed to the continental and other writers on the Conflict of Laws, however, that as far as the leading features of Story's theory are concerned, he is but an adherent of Huber, but highly independent in details. See v. Bar, Private International Law (Gillespie's translation), p. 47. Story's theory of comity, though accepted by a few continental writers, such as Foelix, is rejected by nearly all of the neo-statutists and by all of the internationalists. Under these circumstances an assertion that the doctrines of both these modern schools were largely based on Story's work is not supported by fact.

A considerable portion of the subject matter now contained in chapter 3 under "Current Doctrine on the Conflict of Laws" belongs more properly to the preceding chapter, which deals with the history of the subject. Its contents proper form the most interesting portion of the part now submitted. According to Professor Beale, the modern writings on the subject involve three systems of thought, which he names the "statutory" system, the "international" system, and the "territorial" system. The fundamental differences underlying these systems are brought out clearly and the special doctrines or theories of such noted writers as Pillet, Waechter, Schaeffner, Savigny, v. Bar, Zitelmann, Jitta, Story, Vareilles-Sommières, and Bustamante are given. In the opinion of the reviewer, the value of this portion of the work would be enhanced if,

in connection with the discussion of the different schools of thought, all of the authors included in the general bibliography were specifically mentioned. A knowledge of an author's fundamental point of view in the treatment of a subject would help the reader in the study of a particular work. Professor Beale defends the Anglo-American system of vested rights (as he calls it) against the attacks made upon it by the internationalists, and rejects the statutory system because its doctrine of "public order," which nobody has been able to define, accepts the territorial theory, as it were, through the back door. He admits that the international theory "would furnish a basis for the protection of rights much more firm than that offered by either of the other theories," but concludes that as long as no definite body of rules on which nations can agree have found acceptance even among the scholars, it has no claim to superiority over the Anglo-American theory.

The *Renvoi* theory deserves, in the opinion of the reviewer, a fuller treatment. However vicious it may be, the fact remains that courts are prone to take refuge under it in order to avoid the application of a foreign law. As the English courts have sinned on a number of occasions in this connection, and there is no clear authority of weight to the contrary in either England or the United States, it would be desirable in the interest of the development of a consistent doctrine that such an authoritative treatise as the one prepared by Professor Beale should call particular attention to these decisions and warn the courts against the danger lurking in the adoption of the *Renvoi* theory. It would be well also if Professor Beale would express his view concerning such cases as *Armitage* v. *The Attorney General* (1906 P. 135), and *Lando* v. *Lando* (112 Minn. 257), where the *Renvoi* theory is adopted, though unconsciously, in order to sustain a divorce and a marriage respectively.

The reviewer cannot appreciate the value of the Preliminary Consideration of Jurisprudence contained in Book II. Whether the analysis of rights into primary rights, secondary rights, and remedial rights, which Professor Beale regards as a satisfactory basis for the study of the Conflict of Laws, will be helpful also to other students of the subject, can be known only when their application to the problems in the Conflict of Laws has been fully set forth.

The foregoing suggestions are offered in accordance with the author's wish, expressed in the preface, in the hope that they may be of some use to the author before the above pages receive their final form. They are not intended to belittle the great merit of the part now submitted. The exhaustive and scholarly treatment of the subject gives every assurance that when the treatise is completed, it will be authoritative and constitute the most comprehensive statement of the law in the English tongue. ERNEST G. LORENZEN.

ELEMENTS OF INTERNATIONAL LAW. By George B. Davis. Fourth edition, revised by Gordon E. Sherman. New York: Harper and Brothers. 1916. pp. xxiv, 668.

This work originally appeared in 1889; and now that the author has died, an editor has attempted the almost impossible task of making it fulfill the needs of the present day. It is a book that appeals to the general reader rather than to the lawyer. It is readable, especially when it states and discusses specific cases. For professional purposes, however, it is not sufficiently exact and not satisfactorily abreast of the times. A few examples must suffice. The account of citizenship and naturalization (pp. 138–47) does not clearly indicate whether a child born to American parents resident abroad is an American citizen, nor whether there may be more than one citizenship of origin, nor whether naturalization includes expatriation in the absence of a statute or treaty to that effect made by the country of origin, nor exactly what is the effect of present naturalization treaties, nor what are the terms of the present United States